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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/580,411 | 05/30/2000 | Henry H. Jenkins | 7948 | 8691 |
| 7590 | 05/20/2004 | | EXAMINER | |
| Charles R Rust Woodling Krost & Rust 9213 Chillicothe Road Kirtland, OH 44094 | | | DEXTER, CLARK F | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3724 | |

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/580,411

Applicant(s)

JENKINS, HENRY H.

Examiner

Clark F. Dexter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2 is/are allowed.
- 6) ☒ Claim(s) 1 and 3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed March 19, 2004 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carll, pn 2,313,801, in view of Berlin, pn 3,048,069.

Carll discloses a die cutter apparatus with almost every structural limitation of the claimed invention but lacks a cavity in the support member (claim 1) or the top board (claim 3). However, the Examiner takes Official notice that such cavities are old and well known in the art and provide various known benefits including providing clearance for additional tooling (e.g., a stripper assembly) or to provide clearance for a workpiece to be cut. Berlin discloses one example of a support member/top board with such a cavity configuration. Specifically, Berlin teaches a support member (e.g., 22, 24) that contains a cavity (referred to as a recess, see column 2, lines 66-71, and shown in Figure 7) to accommodate a stripper assembly (it is noted that this support also carries a steel rule die). Therefore, it would have been obvious to one having ordinary skill in

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the art to provide a cavity in the support member/top board of Carll for the well known benefits including those described above.

Allowable Subject Matter

4. Claim 2 is allowable over the prior art of record.

Response to Arguments

5. Applicant's arguments filed March 19, 2004 have been fully considered but they are not persuasive.

In the second paragraph on page 2 of the response, applicant notes that claim 1 includes "the limitation that the lateral movement was caused by reception of the blister into the cavities in the support members." It is respectfully submitted that the Examiner does not understand applicant's point. That is, it is not clear how the structure of the invention is distinguished over the prior art by how it is used. Again, as previously argued throughout the prosecution of this application, there is no structural difference between the claimed invention and the teachings of the applied prior art. The issue regarding how the die is moved is irrelevant in defining the invention. In the same manner, applicant's invention as disclosed in the present application, is no different whether it is adjusted by hand or moved by a blister; that is, there is no structural difference. Rather, the only difference is how the invention is used. It is respectfully emphasized that applicant's claims are drawn to an apparatus/device, not a method/process.

In the third paragraph on page 2 of the response, applicant questions the presence of a cavity. As further clarified in the prior art rejection above, the cavity is referred to as a recess (see column 2, lines 66-71) and is shown in Figure 7. The cavity in this particular example is used to accommodate a stripper.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (703)308-1404. The examiner can be reached Monday through Friday during normal business hours.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (703)308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Clark F. Dexter
Primary Examiner
Art Unit 3724

cf
May 18, 2004